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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF D.R., M.G., H.G., MINOR)
CHILDREN AND THEIR MOTHER, R.G.,)
)
R.G.,)
)
Appellant-Respondent,)
)
VS.) No. 49A05-0708-JV-470
MADION COUNTRY DEDADEMENT OF CHILD)
MARION COUNTY DEPARTMENT OF CHILD)
SERVICES,)
Appellee-Petitioner,)
Appenee-rennoner,)
and,)
und,)
CHILD ADVOCATES, INC.))
)
Co-Appellee/Guardian ad Litem.	,)
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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Marilyn Moores, Judge The Honorable Larry Bradley, Magistrate Cause No. 49D09-0506-JT-23580

February 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Rachel G. ("Mother") appeals the termination of her parental rights to her three children, D.R., M.G., and H.G. We affirm.

Issue

Mother raises one issue on appeal, which we restate as whether the juvenile court's judgment terminating Mother's parental rights was supported by clear and convincing evidence.

Facts

The facts most favorable to the juvenile court's judgment reveal that on May 11, 2004, the Marion County Division of Child Services ("MCDCS") filed a petition alleging Mother's children, D.R., M.G., M.i.G.¹ and H.G., were children in need of services ("CHINS"). Allegations in the CHINS petition included that Mother's husband, Gary

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¹ M.i.G. was born with spina bifida and other serious medical conditions and died on May 13, 2004, while in emergency foster care.

G.,² had taken nude photographs of two of the children and had sexually abused D.R., and that Mother had been aware of the photos and abuse, but did not take adequate steps to protect the children. Additionally, both parents had been arrested on charges stemming from these allegations and were in jail.

Mother, who was represented by counsel, subsequently admitted to the allegations contained in the CHINS petition, and the children were removed from her care pursuant to a dispositional decree entered on November 16, 2004. The children were placed in foster care for a short time, and then were placed in relative care with Dennis and Marissa H. The children have never been returned to the care of their parents.

Mother remained incarcerated from the time she was arrested on May 7, 2004, until December 2004. She was then released on bond and began participating in court-ordered services. Mother was re-incarcerated in December 2005, after being convicted of multiple counts of child molesting and neglect of a dependent stemming from the circumstances in the underlying cause. Mother remained incarcerated at the time of the fact-finding hearing on the termination petition.³

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² Gary G. is the legal and biological father of H.G. and M.G. Gary G. signed a voluntary consent to adopt in August 2005 and is not a party to this appeal. David B., alleged father of D.R., is also not a party to this appeal.

³ The record is unclear as to Mother's ultimate release date from prison. On December 28, 2006, another panel of this court, in a Memorandum Decision, reversed in part Mother's convictions and remanded the cause to the trial court with instructions to re-sentence Mother in accordance with its opinion. See Gardner v. State, 859 N.E.2d 393 (Ind. Ct. App. 2006), trans. denied. However, neither party in the current appeal has provided a copy of the revised sentencing order, thereby hampering our review. Although Mother's testimony at the fact-finding hearing supports the trial court's finding that Mother may have been eligible for release as early as the approximate time of the termination hearing, or as late as December 2007, Mother admits in her brief to this court that the Department of Correction's website indicates Mother's release date is currently set for October 2008.

The fact-finding hearing on the termination petition commenced on June 27, 2007, and was completed on July 10, 2007. On July 13, 2007, the juvenile court issued its order terminating Mother's parental rights to the children. This appeal ensued.

Analysis

This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. <u>In re K.S.</u>, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. <u>In re D.D.</u>, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), <u>trans. denied</u>. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. <u>Id.</u>

Here, the juvenile court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Where the juvenile court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. Thus, if the evidence and inferences support the juvenile court's decision, we must affirm. Id.

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." <u>In re M.B.</u>,

666 N.E.2d 73, 76 (Ind. Ct. App. 1996), <u>trans. denied</u>. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. <u>K.S.</u>, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. <u>Id.</u> at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

- (A) one (1) of the following exists:
- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * * * *

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother does not challenge the juvenile court's conclusions that the children were removed from her care for at least six months pursuant to a dispositional decree, that termination was in the best interests of the children, or that the MCDCS had a satisfactory

plan for the care and treatment of the children, namely, adoption. Instead, Mother contends the MCDCS "failed to prove by clear and convincing evidence that continuation of the parent child relationship posed a threat to the children, or that termination was warranted, given the likelihood of early release and all the work [Mother] has done to change her life by completing relevant services." Appellant's Br. p. 1.

Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, it requires the juvenile court to find only one of the two requirements of subparagraph (B) by clear and convincing evidence. <u>In re D.L.</u>, 814 N.E.2d 1022, 1027 (Ind. Ct. App. 2004), <u>trans. denied</u>. We first consider Mother's assertion that the MCDCS failed to prove by clear and convincing evidence that continuation of the parent-child relationship poses a threat to the children's well-being.

In its judgment terminating Mother's parental rights, the juvenile court made the following pertinent findings:

FINDINGS OF FACT

By *clear and convincing evidence*, the Court now finds:

* * * * *

5. Services completed were a parenting assessment, a psychological evaluation and sexual non-offender therapy.

* * * * *

7. The parenting assessment was performed by Letitia Haywood through Midtown Community [M]ental [H]ealth Center. Concerns raised by AAPI and CAP scores, as well as recent poor judgment, [were] Mother's overall ability to parent her children safely, even though she might have a strong desire to do so.

8. During the assessment, Mother appeared to use minimization, denial, avoidance and rationalization as coping skills regarding her poor judgment to protect her daughter from further sexual abuse.

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10. During the assessment, Mother admitted to sexual abuse by her stepfather as a child.

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- 12. Dr. Papandria found Mother's profile pattern was noted by a marked dependency, depressive self-pity, anxious seeking of reassurances from others, and intense fear of separation from those who provide support. Dependency strivings push Mother to be overly compliant, to be self-sacrificing, to downplay her personal strengths and attributes, and to place herself in inferior or demeaning positions. This self-defeating personality leads Mother into getting in abusive, controlling relationships where she cannot stand up for herself. An example of this would be Mother being afraid to express anger toward a significant other or family member because she would be afraid of losing them. This Dependent Personality Disorder is the result of long standing issues.
- 13. Mother has a lack of self-awareness and demonstrated to Dr. Papandria that she has a limited capacity to identify comfortably with real people in her life. This would likely contribute to misguided decision making and ineffective problem solving. Although Mother can identify a problem, she departs from clear thinking with loose association.
- 14. To overcome these problems, assuming no new trauma would exist, intensive long term therapy of three to four years would be needed to provide Mother with a new image of herself and a new coping style. Without this, she would not be likely to modify her perspective and safely parent her children.

* * * * *

16. Daniel Navarro, Mother's therapist with the Family Growth Center also found Mother to be naïve, have low self-esteem, poor judgment and coping skills. Two examples of Mother's behavior resulting from poor judgment were her different

- rationalizations in not contacting Child Protective Services when she found out her husband was molesting her daughter, and the fact that Mother had become pregnant by a third party while awaiting trial.
- 17. Mr. Navarro also felt that intensive family therapy would be needed to address Mother's issues.

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21. Mother has participated in several self-improvement courses while incarcerated. She has also started on an Associates Degree and receives good grades. The type of intensive therapy Mother needs is not available to her at this time.

* * * * *

- 23. The reasons for the children's removal and placement outside the home have not been remedied, nor are [they] likely to be remedied. Mother is still in prison. She will have to meet her own needs of housing and employment after her release. The primary concern for the children's safety can only be eradicated by years of intensive therapy to overcome Mother's deep seeded [sic] history of poor judgment, and coping and problem solving skills.
- At the time of the termination trial, Mother would not be able to safely parent the children. Additional time to wait until Mother is released and pursues therapy is not in the best interests of the children. They were removed from Mother in May of 2004 and adoption will provide them with a sense of permanency and stability.

Appellant's App. pp. 23-25.

Our review of the record reveals that these findings are supported by the evidence. At trial, Dr. Papandria testified that Mother needed intensive, long-term therapy for three to four years before she would likely be able to modify her behavior, and, without this therapy Mother would not likely be able to modify her perspective and safely parent her children. Mr. Navarro's testimony echoed these sentiments, stating that Mother was naïve,

had low self-esteem, poor judgment, and would need intensive family therapy to address her issues. Moreover, when questioned whether the children should be returned to Mother's care, Mr. Navarro responded:

I don't think they should be immediately returned to [Mother]. For a lot of reasons. I mean, in the best interest of the children, it would be a huge sudden, dramatic transition for them . . . to go back to her. And I think . . . [Mother] needs to continue working on her own individual issues. . . . [T]here could be a [severe] risk. . . . I believe [Mother] didn't want her children to be molested but she needs to work on her own trauma issues. She needs to work on her own judgment. She needs to learn how not to let other people take advantage of her. And she has a lot of work to do.

Tr. pp. 102-03. Likewise, when asked whether the MCDCS has any "concern about risk of harm to the children if they [were] returned back to [Mother][,]" Case Manager Valerie Stephen responded:

Yes. In the past, [Mother] has shown very poor judgment in dealing with her children, dealing with . . . other people harming her children, sexual abuse. And showing a willingness and/or ability to stop something that she's known is occurring. And at this point in time there's no guarantee that she would be able to adequately keep her children safe.

<u>Id.</u> at 143. Stephen went on to explain that despite completing some of the court-ordered services, she still had concerns about Mother's ability to provide a safe and nurturing environment for the children because Mother has "always portrayed herself as the victim" and, as a result, Stephen felt there was a "real concern" that she would find someone else to help take care of the children and the situation would "start over again." Id.

Mother counters that continuation of the parent-child relationship no longer poses a threat to the children because Gary G. will be in prison until approximately 2028. She also

directs our attention to the various self-improvement courses she has participated in while incarcerated. Although we applaud Mother's efforts to improve herself while incarcerated, the evidence most favorable to the judgment supports the trial court's finding that these courses are not the types of courses Mother needs in order to be able to provide a safe and stable living environment for the children.

Mother's additional assertion that any parenting deficiency she had could be "easily and quickly remedied through home-based counseling" is also unavailing. Appellant's Br. p. 8. As stated earlier, the trial court must assess the parent's fitness to care for the children as of the time of the termination hearing and cannot be based on a parent's future plans. In re A.N.J., 690 N.E.2d 716, 721 (Ind. Ct. App. 1997).

Based on the foregoing, we conclude that the evidence supports the juvenile court's specific findings that "the children's safety can only be eradicated by years of intensive therapy to overcome Mother's deep seeded [sic] history of poor judgment and coping" skills and that "Mother would not be able to safely parent the children[.]" Appellant's App. p. 25. These findings, in turn, support the juvenile court's ultimate determination that continuation of the parent-child relationship poses a threat to the children's well-being.

A trial court need not wait until the children are "irreversibly influenced" such that their physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F.v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), <u>trans. denied</u>. Under the facts of this case, it is unfair to ask the children to continue to wait until Mother is able to get, and benefit from, the help that she needs. The approximately three years that have already passed is long enough.

See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). ⁴

We will reverse a termination of parental rights "only upon a showing of 'clear error' – that which leaves us with a definite and firm conviction that a mistake has been made." <u>A.N.J.</u>, 690 N.E.2d at 722 (quoting <u>Egly</u>, 592 N.E.2d at 1235). We find no such error here.

Conclusion

The juvenile court's judgment terminating Mother's parental rights to D.R., M.G., and H.G. is supported by clear and convincing evidence. We therefore affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.

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⁴ Having determined that the trial court's conclusion that continuation of the parent-child relationship poses a threat to the children is supported by the evidence, we need not address whether the MCDCS proved that the conditions requiring removal would not be remedied.